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Supreme Court, U.S.
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No. 03-455

In the

Supreme Court of the United States

FARIDA RAHMAN,

Petitioner,

v.

CITTERIO U.S.A. CORPORATION,

Respondent.

Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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RESTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals for the Third Circuit departed from the accepted and usual course of judicial proceedings by affirming the United States District Court for the Middle District of Pennsylvania, which granted Respondent's Motion for Summary Judgment in Petitioner's Employment Discrimination Claim?

CORPORATE DISCLOSURE STATEMENT

Citterio U.S.A. Corporation hereby discloses that it is a Pennsylvania company, that there are no parent corporations to Citterio U.S.A. Corporation, and there are no publicly-held companies which own 10% or more of Citterio U.S.A. Corporation's stock

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COUNTER-STATEMENT OF THE CASE

Factual History

Farida B. Rahman ("Rahman") first applied for a position with Citterio U.S.A. Corporation ("Citterio") through a referral from the local Job Center (unemployment office) in March of 1994. She was subsequently hired on March 18, 1994 by Citterio. The position was temporary, which classification was known to Rahman. Rahman worked at this position through May 20, 1994 at which point she was laid off. During Rahman's employment with Citterio there were no racial or religious utterances or slurs made against her by any Citterio employees or management. During Rahman's first temporary employment with Citterio as indicated herein, she was described as an "okay"/or "average" worker.

Rahman was called back by Citterio on October 5, 1994 and worked through December 21, 1994 when she was again laid off. It was during the second period of employment with Citterio that Rahman alleges she realized Citterio had discriminated against her on the basis of race, religion and gender. Rahman based this belief of Citterio having already hired several other individuals, and did not hire her even though she was interested and available. During Rahman's second period of employment, her work was considered below average.

Following Rahman's separation from employment on December 21, 1994 with Citterio, she never made a formal job application to Citterio. Rahman claimed she called the plant several times and talked to various members of management and sent letters to Citterio. However, she was unclear as to whether or not she sent letters during the time period from December 21, 1994 through December of 1996. In December of 1996, Rahman obtained employment through The Job Center (unemployment office) with a company called Pro Kleen performing sanitation work in the Citterio building, though not as an employee of Citterio. Rahman worked for Pro Kleen within the Citterio premises from mid-December of 1996 through March 3, 1997 when she was laid off by Pro Kleen, who is not a party to this action. Since Rahman's layoff from March 3, 1997 by Pro Kleen, she has made several attempts via correspondence to gain employment with Citterio. The correspondence consists of letters dated May 15, 1997; April 12, 1997; April 22, 1998; June 24, 1998; and November 19, 1998. Rahman further claims to have made verbal applications for employment on December 15, 1998 and February 5, 1999. Due to Rahman's average to poor work performance during her two temporary employment periods with Citterio, as well as her poor evaluation during her employment with Pro Kleen in Citterio's facility, no position was offered.

REASONS FOR DENYING THE WRIT

The issue presented by the Petition appears to be whether the Third Circuit Court of Appeals abused its discretion in affirming the decision and order of the United States District Court for the Middle District as it relates to employment discrimination cases. The Third Circuit Court of Appeals affirmed the Middle District Court's decision consistent with both the decided case law of this Honorable Court and of other Circuit Courts. The principal purpose for which the United States Supreme Court uses certiorari jurisdiction is to resolve conflicts among Circuit Courts of Appeals and State Courts concerning meaning of provisions of federal law. Braxton vs. U.S., 500 U.S. 344 (1991).

A. THE DISTRICT COURT AND THE COURT OF APPEALS APPROPRIATELY FOLLOWED THE MCDONNEL DOUGLAS TEST.

This Court recently reaffirmed the McDonnel Douglas analysis in Reeves vs. Sanderson Plumbing Productions, 147 L.Ed.2d 105 (2000). The McDonnel Douglas test requires that:

> (1) The Plaintiff must establish a prima facie case of discrimination, i.e., (a) That he is a member of a protected class; (b) That he applied for a position or promotion for which he was qualified; (c) That his application was rejected; (d) That the employer continued to consider

or promote applicants of equal qualifications who are not in a protected class.

(2) If the Plaintiff succeeds in showing prima facie case, the burden shifts to Defendant to produce evidence that the Plaintiff was rejected or someone else was preferred for a legitimate non-discriminatory reason. "This burden is one of production not persuasion; it can involve no credibility assessments".

Reeves at 117 (internal quotations omitted).

(3) If the Defendant meets this burden by offering admissible evidence sufficient for the trier fact to conclude that the Plaintiff was rejected or someone else was preferred for a legitimate non-discriminatory reason, the McDonnel Douglas frame work with its presumptions and burdens disappears. The Plaintiff is left with the responsibility to prove by a preponderance of the evidence that the legitimate reasons offered by the Defendant were not its true reasons but were a pretext for discrimination. Id.

At the District Court, Citterio essentially conceded the elements regarding whether Rahman established a prima facie case. The argument at the summary judgment level focused on prongs two and three of the McDonnel Douglas analysis.

B. THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT APPROPRIATELY AFFIRMED THE DISTRICT COURT'S ORDER ENTERING SUMMARY JUDGMENT ON BEHALF OF CITTERIO AS NO GENUINE ISSUE OF MATERIAL FACT EXISTED AFTER APPLYING THE MCDONNEL DOUGLAS ANALYSIS.

Applying the second prong of the McDonnel Douglas analysis, Citterio produced evidence that Rahman was rejected due to evaluations performed by her Supervisor, Hugh Maloney. After her initial work periods with Citterio in 1994, less favorable evaluations were the reason why she was not offered a position. In Rahman's later applications or inquiries for employment to Citterio, these evaluations were also taken into account as well as her work for Pro Kleen within Citterio's facility. The evaluations by Rahman's supervisors provided a legitimate non-discriminatory reason for the rejection of Rahman's various applications for employment and/or inquiries of employment over a five-year span. In her Petition before this Court, Rahman urges this Court to reverse both the District Court and Court of Appeals' because of a purported, unacceptable and unusual course of proceedings below.

Rahman's attempt to show that the lower courts misapplied the standard is enunciated by this Honorable Court should fail. In short, Rahman attempts to show that an alleged contradiction in testimony of Citterio's witnesses demonstrates Citterio's proffered reason for not hiring Rahman was pretextual. Specifically, Rahman alleges the testimony of Hugh Maloney contradicted itself in that he testified at one point that Rahman was an "okay" worker and later stated Rahman was a below-average worker. However, this was a complete misreading of the record as noted by the District Court and the Third Circuit Court of Appeals. In actuality, the record indicated the testimony of Citterio's witnesses consistently stated Rahman was an average worker during her first period of employment. Furthermore, Citterio's employees' testimony is also clear and consistent Rahman was a below-average worker during her second period of employment. Additionally, the record is clear that Rahman's performance with Pro Kleen on the Citterio premises was also poor.

As argued in her Petition, Rahman attempts to show Citterio's witnesses' testimony contradict each other as to whether Rahman was a below-average worker during her first period with Citterio.Rahman alleges her supervisor's own testimony contradicts itself regarding the criteria used in evaluating work performance. However, Rahman clearly misconstrues the testimony of her supervisor regarding evaluation criteria. Her supervisor testified that an evaluation of an employee has two separate components, specifically: performance and absenteeism. Additionally, her supervisor testified performances are evaluated by the employee's ability to adapt and to learn various jobs.

In applying this standard to Rahman and two other employees, who were in fact hired, during the first temporary employment period with Citterio, her supervisor concluded that one was above-average in performance but below-average in attendance. The other, however, was considered above-average in both performance and attendance.

We turn to the third prong of McDonnel Douglas. Rahman made one statement in an attempt to prove that the legitimate reason offered by Citterio for its non-hire of Rahman was a pretext for its discrimination. That was "I am a good worker". Rahman's self-appraisal of her work ability does not create a genuine issue of material fact, nor does her own self-serving remarks standing alone raise sufficient doubt as to the credence of Citterio's explanation for her termination and later failure to rehire. Forsythe vs. Board of Education, Unified School District No. 489, 956 F. Supp. 927, 934 (D Kansas 1997); citing Schultz vs. General Electric Capital Corporation, 37 F.3d 329, 334 (7th Cir. 1994) and Furr vs. Seagate Technology, Inc., 82 F.3d 980, 988 (10th Cir. 1996) see also, Healy vs. New York Life Insurance Company, 860 F.2d 1209 (3rd Cir. 1988), *cert. denied*, 490 U.S. 1098 (1989) (where Plaintiff is unable to point to specific evidence casting doubt on employer's articulated nondiscriminatory reason for termination, entry of summary judgment in employer's favor was appropriate); Billet vs. Cigna Corp., 940 F.2d 812, 816 (3rd Cir. 1991) (in order to prove pretext, Plaintiff must adduce sufficient evidence that employer's articulated reason is unworthy of credence.).

A clear view of the record indicates the only weaknesses, implausibilities, inconsistencies, incoherence, or contradictions presented by Rahman are in her own arguments. She bases her assertions on fabrications of fact not in the record. Furthermore, she misconstrues clear testimony in a manner which no reasonable fact finder could possibly interpret as discriminatory intent. Though Rahman attempts to chip away by way of purported inconsistencies in Citterio's employee's testimony, she is unable to prove any discriminatory intent other than her assertion that she was an "okay" worker.

CONCLUSION

This case does not merit further review by this Honorable Court. For the foregoing reasons, Petitioner's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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